

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

SERGIO GONZALEZ, SR.,	)	CASE NO. 1:17CV00244
	)	
Petitioner,	)	
	)	JUDGE DONALD C. NUGENT
v.	)	
	)	MAGISTRATE JUDGE
	)	KATHLEEN B. BURKE
COMMISSIONER OF SOCIAL	)	
SECURITY ADMINISTRATION,	)	
	)	<b><u>MEMORANDUM OPINION</u></b>
Respondent.	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke (ECF #16). On February 6, 2017, Petitioner, Sergio Gonzalez, Sr., filed his Complaint (ECF #1) challenging the final decision of the Commissioner of Social Security denying her claim for Disability Insurance Benefits. Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Burke.

On November 22, 2017, the Magistrate Judge issued her Report and Recommendation. The Magistrate Judge found the Commissioner's decision denying Disability Insurance Benefits to be supported by substantial evidence and recommends that the Commissioner's decision be affirmed. Objections to the Report and Recommendation were to be filed within 14 days of service. On December 6, 2017, Petitioner filed a timely objection to the Report and Recommendation. (ECF #17). The Commissioner of Social Security filed a response to the objection on December 15, 2017. (ECF #18).

### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo. FED R. CIV.

P. 72(b) states:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions

Accordingly, this Court will review the Report and Recommendation to which timely objections have been filed, de novo. *See Dacas Nursing Support Sys., Inc. v. NLRB*, 7 F.3d 511 (6<sup>th</sup> Cir. 1993).

### **Conclusion**

The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objections have been made. *See* FED. R. CIV. P. 72(b). Petitioner claimed disability due to bulging disks and arthritis. (Tr. 81, 87, 147). Petitioner argues that the Magistrate Judge's Report and Recommendation erred in finding that Petitioner did not introduce "appropriate medically acceptable imaging" to show his condition was severe enough to meet medical Listing 14.09(C). (ECF #17 at p.2). The Magistrate Judge considered medical testimony from Dr. Brovender, who testified there was no evidence from x-rays of ankylosis (fixation) in Petitioner's joints. (Tr. 470). After review of this testimony, the Magistrate Judge agreed with the ALJ's conclusion that

Listing 14.09(C) was not satisfied because there was no evidence of ankylosis (fixation). (ECF #16 at p.32). The Court finds that the Plaintiff's objections raise no factual or legal arguments that have not been fully addressed by the Magistrate Judge's Report and Recommendation.

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Magistrate Judge's Report and Recommendation fully and accurately addresses all of the Plaintiff's claims and the Plaintiff's objections are unwarranted. Therefore, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety. Petitioner's request that the case be reversed and remanded (ECF #1) is DENIED. The Social Security Administration's final decision denying Petitioner's applications for Supplemental Security Income and Disability Insurance Benefits is AFFIRMED.

IT IS SO ORDERED

  
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DONALD C. NUGENT  
United States District Court

DATED: March 2, 2018